SPEECH

OF

HON. J. P. BENJAMIN,

OF LOUISIANA,

ON

THE RIGHT OF SECESSION.

DELIVERED IN THE SENATE OF THE UNITED STATES, DEC. 31, 1860.

The Senate, as in Committee of the Whole, resumed the consideration of the joint resolution introduced by Mr. JOHNSON, of Tennessee, proposing amendments to the Constitution of the United States—Mr. BENJAMIN said:

Mr. PRESIDENT: When I took the floor at our last adjournment, I stated that I expected to address the Senate to-day in reference to the critical issue now before the country. I had supposed that by this time there would have been some official communication to the Senate, in reference to the fact now known to all, of the condition of affairs in South Carolina. I will assume, for the purposes of the remarks that I have to make, that those facts have been officially communicated, and address myself to them. And, Mr. President, probably never has a deliberative assembly been called upon to determine questions calculated to awaken a more solemn sense of responsibility than those that now address themselves to our consideration. We are brought at last, sir, directly forced, to meet promptly an issue produced by an irresistible course of events whose inevitable results some of us, at least, have foreseen for years. Nor, sir, have we failed in our duty of warning the Republicans that they were fast driving us to a point where the very instincts of self-preservation would impose upon us the necessity of separation. We repeated those warnings with a depth of conviction, with an earnestness of assertion that inspired the hope that we should succeed in imparting at least some faint assurance of our sincerity to those by whose aid alone could the crisis be averted. But, sir, our assertions were derided; our predictions were scoffed at; all our honest and patriotic efforts to save the Constitution and the Union sneered at and maligned, as dictated, not by love of country, but by base ambition for place and power.

Mr. President, it has been justly said that this is no time for crimination; and, sir, it is in no such spirit, but with the simple desire to free myself personally, as a public servant, from all responsibility for the present condition of affairs, that I desire to recall to the Senate some remarks made by me in debate more than four years ago, in which I predicted the precise state of public feeling now existing, and pointed out the two principal causes that were certain to produce that state. The first was the incessant attack of the Republicans, not simply on the interests, but on the feelings and sensibilities of a high-spirited people by the most insulting language, and the most offensive epithets; the other was their fatal success in persuading their followers that these constant aggressions could be continued and kept up with no danger; that the South was too weak and too conscious of weakness to dare resistance. Sir, on the 2d of May, 1856, after reviewing this subject at some length, I said:

"Now, Mr. President, when we see these two interests contrasted—the North struggling for the possession of a power to which she has no legitimate claim under the Constitution, for the sole purpose of abusing that power—the South struggling for property, honor, safety—all that is dear to man—tell me if the history of the world exhibits an example of a people occupying a more ennobling attitude than the people of the South? To vituperation they oppose calm reason. To menaces and threats of violence, and insulting assumptions of superiority, they disdain reply. To direct attacks on their rights or their honor, they appeal to the guarantees of the Constitution; and

when those guarantees shall fail, and not till then, will the injured, outraged South throw her sword into the scale of her rights, and appeal to the God of battles to do her justice. I say her sword, because I am not one of those who believe in the possibility of a peaceful disruption of the Union. It cannot come until all possible means of conciliation have been exhausted; it cannot come until every angry passion shall have been roused; it cannot come until brotherly feeling shall have been converted into deadly hate; and then, sir, with feelings embittered by the consciousness of injustice, or passions high-wrought and inflamed, dreadful will be the internecine war that must ensue.

"Mr. President, among what I consider to be the most prominent dangers that now exist, is the fact that the leaders of the Republican party at the North have succeeded in persuading the masses of the North that there is no danger. They have finally so wrought upon the opinion of their own people at home by the constant iteration of the same false statements and the same false principles, that the people of the North cannot be made to believe that the South is in earnest, notwithstanding its calm and resolute determination which produces the quiet so ominous of evil if ever the clouds shall burst. The people of the North are taught to laugh at the danger of dissolution. One honorable Senator is reported to have said, with exquisite amenity, that the South could not be kicked out of the Union. The honorable Senator from New York says:

"'The slaveholders, in spite of all their threats, are bound to it by the same bonds, and they are bound to it also by a bond *peculiarly their own—that of dependence on it for their own safety. Three million slaves are a hostile force constantly in their presence, in their very midst.* The servile war is always the most fearful form of war. *The world without sympathizes with the servile enemy.* Against that war the American Union is the only defence of the slaveholders—their *only* protection. If ever they shall, in a season of madness, recede from that Union, and provoke that war, they will—soon come back again.'

"The honorable Senator from Massachusetts [Mr. WILSON] indulges in the repetition of a figure of rhetoric that seems peculiarly to please his ear and tickle his fancy. He represents the southern mother as clasping her infant with convulsive and closer embrace, because the black avenger, with uplifted dagger, would be at the door, and he tells us that is a bond of Union which we dare not violate."

Mr. President, no man can deny that the words uttered four years and a half ago form a faithful picture of the state of things that we see around us now. Would to God, sir, that I could believe that the apprehensions of civil war, then plainly expressed, were but the vain imaginations of a timorous spirit. Alas, sir, the feelings and sentiments expressed since the commencement of this session, on the opposite side of this floor, almost force the belief that a civil war is their desire; and that the day is full near when American citizens are to meet each other in hostile array; and when the hands of brothers will be reddened with the blood of brothers.

Mr. President, the State of South Carolina, with a unanimity scarcely with parallel in history, has dissolved the union which connects her with the other States of the confederacy, and declared herself independent. We, the representatives of those remaining States, stand here to-day, bound either to recognize that independence, or to overthrow it; either to permit her peaceful secession from the confederacy, or to put her down by force of arms. That is the issue. That is the sole issue. No artifice can conceal it. No attempts by men to disguise it from their own consciences, and from an excited or alarmed public, can suffice to conceal it. Those attempts are equally futile and disingenuous. As for the attempted distinction between coercing a State, and forcing all the people of the State, by arms, to yield obedience to an authority repudiated by the sovereign will of the State, expressed in its most authentic form, it is as unsound in principle as it is impossible of practical application. Upon that point, however, I shall have something to say a little further on.

If we elevate ourselves, Mr. President, to the height from which we are bound to look in order to embrace all the vast consequence that must result from our decision, we are not permitted to ignore the fact that our determination does not involve the State of South Carolina alone. Next week, Mississippi, Alabama, and Florida, will have declared themselves independent; the week after, Georgia; and a little later, Louisiana; soon, very soon, to be followed by Texas and Arkansas. I confine myself purposely to these eight States, because I wish to speak only of those whose action we know with positive certainty, and which no man can for a moment pretend to controvert. I designedly exclude others, about whose action I feel equally confident, although others may raise a cavil.

Now, sir, shall we recognize the fact that South Carolina has become an independent State, or shall we wage war against her? And first as to her right. I do not agree with those who think it idle to discuss that right. In a great crisis like this, when the right asserted by a sovereign State is questioned, a decent respect for the opinions of mankind at least requires that those who maintain that right, and mean to act upon it, should state the reasons upon which they maintain it. If, in the discussion of this question, I shall refer to familiar principles, it is not that I deem it at all necessary to call the attention of members here to them; but because they naturally fall within the scope of my argument, which might otherwise prove unintelligible.

From the time that this people declared its independence of Great Britain, the right of the people to self-government in its fullest and broadest extent has been a

cardinal principle of American liberty. None deny it. And in that right, to use the language of the Declaration itself, is included the right whenever a form of government becomes destructive of their interests or their safety, "to alter or to abolish it, and to institute a new government, laying its foundation on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness." I admit that there is a principle that modifies this power, to which I shall presently advert; but leaving that principle for a moment out of view, I say there is no other modification which, consistently with our liberty, we can admit, and that the right of the people of one generation, in convention duly assembled, to alter the institutions bequeathed by their fathers is inherent, inalienable, not susceptible of restriction; that by the same power under which one Legislature can repeal the act of a former Legislature, so can one convention of the people duly assembled, repeal the acts of a former convention of the people duly assembled; and that it is in strict and logical deduction from this fundamental principle of American liberty, that South Carolina has adopted the form in which she has declared her independence. She has in convention duly assembled in 1860, repealed an ordinance passed by her people in convention duly assembled in 1788. If no interests of third parties were concerned, if no question of compact intervened, all must admit the inherent power—the same inherent power which authorizes a Legislature to repeal a law, subject to the same modifying principle, that where the rights of others than the people who passed the law are concerned, those rights must be respected and cannot be infringed by those who descend from the first Legislature or who succeed them. If a law be passed by a Legislature impairing a contract, that law is void, not because the Legislature under ordinary circumstances would not have the power to repeal a law of its predecessor, but because by repealing a law of its predecessor involving a contract, it exercises rights in which third persons are interested, and over which they are entitled to have an equal control. So in the case of a convention of the people assuming to act in repeal of an ordinance which showed their adherence to the Constitution of the United States, the power is inherently in them, subject only to this modification: that they are bound to exercise it with due regard to the obligations imposed upon them by the compact with others.

Authorities, on points like this, are perfectly idle; but I fear that I may not have expressed the ideas which I entertain so well as I find them expressed by Mr. Webster in his celebrated argument in the Rhode Island case. He says:

"First and chief, no man makes a question that the people are the source of all political power. Government is instituted for their good, and its members are their agents and servants. He who would argue against this, must argue without an adversary. And who thinks there is any peculiar merit in asserting a doctrine like this, in the midst of twenty million people, when nineteen million nine hundred and ninety-nine thousand nine hundred and ninety-nine of them hold it, as well as himself? There is no other doctrine of government here; and no man imputes to another, and no man should claim for himself, any particular merit for asserting what everybody knows to be true, and nobody denies."—*Works of Daniel Webster*, vol. 6, p. 221.

But he says in this particular case an attempt is made to establish the validity of the action of the people, organized in convention, without their having been called into convention by the exercise of any constituted authority of the State; and against the exercise of such a right of the people as that he protests. He says:

"Is it not obvious enough that men cannot get together, and count themselves, and say they are so many hundreds and so many thousands, and judge of their own qualifications, and call themselves the people, and set up a government? Why, another set of men forty miles off, on the same day, with the same propriety, with as good qualifications, and in as large numbers, may meet and set up another government; one may meet at Newport and another at Chepachet, and both may call themselves the people."—*Ibid.*, p. 226.

Therefore, he says it is not a mere assemblage of the people, gathered together *sua sponte*, that forms that meeting of the people authorized to act in behalf of the people; but he says that—

"Another American principle growing out of this, and just as important and well settled as is the truth that the people are the source of power, is, that when in the course of events it becomes necessary to ascertain the will of the people on a new exigency, or a new state of things or of opinion, the legislative power provides for that ascertainment by an ordinary act of legislation."

"All that is necessary here is, that the will of the people should be ascertained by some regular rule of proceeding prescribed by previous law. But when ascertained, that will is as sovereign as the will of a despotic prince, of the Czar of Muscovy, or the Emperor of Austria himself, though not quite so easily made known. A ukase or an edict signifies at once the will of a despotic prince: but that will of the people, which is here as sovereign as the will of such a prince, is not so quickly ascertained or known; and hence arises the necessity for suffrage, which is the mode whereby each man's power is made to tell upon the Constitution of the Government, and in the enactment of laws."

He concludes—

"We see, therefore, from the commencement of the Government under which we live, down to this late act of the State of New York"—

To which he had just referred—

"one uniform current of law, of precedent, and of practice, all going to establish the point that changes in government are to be brought about by the will of the people, assembled under such legislative provisions as may be necessary to ascertain that will truly and authentically."—*Ibid.*, pp. 227, 229.

We have then, sir, in the case of South Carolina, so far as the duly organized convention is concerned, the only body that could speak the will of this generation in repeal of the ordinance passed by their fathers in 1788; and I say again, if no third interests intervened by a compact binding upon their faith, their power to do so is inherent and complete. But, sir, there is a compact, and no man pretends that the generation of to-day is not bound by the compacts of the fathers; but, to use the language of Mr. Webster, a bargain broken on one side is a bargain broken on all; and the compact is binding upon the generation of to-day only if the other parties to the compact have kept their faith.

This is no new theory, nor is practice upon it without precedent. I say that it was precisely upon this principle that this Constitution was formed. I say that the old Articles of Confederacy provided in express terms that they should be perpetual; that they should never be amended or altered without the consent of all the States. I say that the delegates of States unwilling that that Confederation should be altered or amended, appealed to that provision in the convention which formed the Constitution, and said: "If you do not satisfy us by the new provisions, we will prevent your forming your new government, because your faith is plighted, because you have agreed that there shall be no change in it unless with the consent of all." This was the argument of Luther Martin, as was the argument of Paterson, of New Jersey, and of large numbers of other distinguished members of the convention. Mr. Madison answered it. Mr. Madison said, in reply to that:

"It has been alleged that the Confederation having been formed by unanimous consent, could be dissolved by unanimous consent only. Does this doctrine result from the nature of compacts? Does it arise from any particular stipulation in the Articles of Confederation? If we consider the Federal Union as analogous to the fundamental compact by which individuals compose one society, and which must, in its theoretic origin at least, have been the unanimous act of the component members, it cannot be said that no dissolution of the compact can be effected without unanimous consent. A breach of the fundamental principles of the compact, by a part of the society, would certainly absolve the other part from their obligations to it." * * * * *

"If we consider the Federal Union as analogous, not to the social compacts among individual men, but to the conventions among individual States, what is the doctrine resulting from these conventions? Clearly, according to the expositors of the law of nations, that a breach of any one article, by any one party, leaves all the other parties at liberty to consider the whole convention as dissolved, unless they choose rather to compel the delinquent party to repair the breach. In some treaties, indeed, it is expressly stipulated that a violation of particular articles shall not have this consequence, and even that particular articles shall remain in force during war, which is, in general, understood to dissolve all subsisting treaties. But are there any exceptions of this sort to the Articles of Confederation? So far from it, that there is not even an express stipulation that force shall be used to compel an offending member of the Union to discharge its duty."—*Madison Papers of Debates in the Federal Convention*, vol. 5, pp. 206, 207.

I need scarcely ask, Mr. President, if anybody has found in the Constitution of the United States any article providing, by express stipulation, that force shall be used to compel an offending member of the Union to discharge its duty.

Acting on that principle, nine States of the Confederation, seceded from the Confederation, and formed a new Government. They formed it upon the express ground that some of the States had violated their compact. Immediately after, two other States seceded and joined them. They left two alone, Rhode Island and North Carolina; and here is my answer to the Senator from Wisconsin, (Mr. DOOLITTLE,) who asked me the other day, if thirty-three States could expel one, inasmuch as one had the right to leave thirty-three; I point him to the history of our country, to the acts of the fathers, as a full answer upon that subject. After this Government had been organized; after every department had been in full operation for some time; after you had framed your navigation laws, and provided what should be considered as ships and vessels of the United States, North Carolina and Rhode Island were still foreign nations, and so treated by you, so treated by you in your laws; and in September, 1789, Congress passed an act authorizing the citizens of the States of North Carolina and Rhode Island to enjoy all the benefits attached to owners of ships and vessels of the United States up to the 1st of the following January—gave them that much more time to come into the new Union, if

they thought proper; if not, they were to remain as foreign nations. Here is the history of the formation of this Constitution, so far as it involves the power of the States to secede from a Confederation, and to form new confederacies to suit themselves.

Now, Mr. President, there is a difficulty in this matter, which was not overlooked by the framers of the Constitution. One State may allege that the compact has been broken, and others may deny it; who is to judge? When pecuniary interests are involved, so that a case can be brought up before courts of justice, the Constitution has provided a remedy within itself. It has declared that no act of a State, either in convention or by Legislature, or in any other manner, shall violate the Constitution of the United States, and it has provided for a supreme judiciary to determine cases arising in law or equity which may involve the construction of the Constitution or the construction of such laws.

But, sir, suppose infringements on the Constitution in political matters, which from their very nature cannot be brought before the court? That was a difficulty not unforeseen; it was debated upon propositions that were made to meet it. Attempts were made to give power to this Federal Government in all its departments, one after the other, to meet that precise case, and the convention sternly refused to admit any.

It was proposed to enable the Federal Government, through the action of Congress, to use force. That was refused.

It was proposed to give to the President of the United States the nomination of State Governors, and to give them a veto on State laws, so as to preserve the supremacy of the Federal Government. That was refused.

It was proposed to make the Senate the judge of difficulties that might arise between States and the General Government. That was refused.

It was finally proposed to give Congress a negative on State legislation interfering with the powers of the Federal Government. That was refused.

At last, at the very last moment, it was proposed to give that power to Congress by a vote of two-thirds of each branch; and that, too, was denied.

Now, sir, I wish to show, with some little detail—as briefly as I possibly can and do justice to the subject—what was said by the leading members of the convention on these propositions to subject the States, in their political action, to any power of the General Government, whether of Congress, of the judiciary, or of the Executive—and by any majorities whatever. The first proposition was made by Mr. Randolph, on the 29th of May, 1787; and it was, that power should be given to Congress—

"To negative all laws passed by the several States contravening, in the opinion of the National Legislature, the articles of Union, or any treaty subsisting under the authority of the Union; and to call forth the force of the Union against any member of the Union failing to fulfill its duty under the articles thereof."

To negative all laws violative of the articles of Union, and to employ force to constrain a State to perform its duty. Mr. Pinckney's proposition on the same day was:

"And to render these prohibitions effectual, the Legislature of the United States shall have the power to revise the laws of the several States that may be supposed to infringe the powers exclusively delegated by this Constitution to Congress, and to negative and annul such as do."

The proposition giving a power to negative the laws of the States, passed at first hurriedly, without consideration; but upon further examination, full justice was done to it. Upon the subject of force, Mr. Madison said, moving to postpone the proposition to authorize force:

"Mr. Madison observed, that the more he reflected on the use of force, the more he doubted the practicability, the justice, and the efficacy of it, when applied to people collectively, and not individually. A union of the States containing such an ingredient, seemed to provide for its own destruction. The use of force against a State would look more like a declaration of war than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound. He hoped that such a system would be framed as might render this resource unnecessary, and moved that the clause be postponed."—*Madison Papers—Debates in the Federal Convention*, vol. 5, p. 140.

Mr. Mason, the ancestor of our own distinguished colleague from Virginia, said:

"The most jarring elements of nature, fire and water, themselves, are not more incompatible than such a mixture of civil liberty and military execution. Will the militia march from one State into another in order to collect the arrears of taxes from the delinquent members of the Republic? Will they maintain an army for this purpose? Will not the citizens of the invaded State assist one another, till they rise as one man, and shake off the Union altogether? Rebellion is the only case in which the military force of the State can be properly exerted against its citizens. In one point of view, he was struck with horror at the prospect of recurring to this expedient. To punish the non-payment of taxes with death was a severity not yet adopted by despotism itself; yet this unex-

ampled cruelty would be mercy compared to a military collection of revenue, in which the bayonet could make no discrimination between the innocent and the guilty. He took this occasion to repeat, that, notwithstanding his solicitude to establish a national Government, he never would agree to abolish the State governments, or render them absolutely insignificant. They were as necessary as the general Government, and he would be equally careful to preserve them."—*Madison Papers —Debates in the Federal Convention*, vol. 5, p. 217.

Mr. Ellsworth, upon the same subject, said:

"Hence we see how necessary for the Union is a coercive principle. No man pretends the contrary: we all see and feel this necessity. The only question is, shall it be a coercion of law, or a coercion of arms? There is no other possible alternative. Where will those who oppose a coercion of law come out? Where will they end? A necessary consequence of their principles is a war of the States one against the other. I am for coercion by law—that coercion which acts only upon delinquent individuals. This Constitution does not attempt to coerce sovereign bodies, States, in their political capacity. No coercion is applicable to such bodies; but that of an armed force. If we should attempt to execute the laws of the Union by sending an armed force against a delinquent State, it would involve the good and bad, the innocent and guilty, in the same calamity."—*Elliot's Debates*, vol. 2, p. 197.

Alexander Hamilton said:

"It has been observed, to coerce the States is one of the maddest projects that was ever devised. A failure of compliance will never be confined to a single State. This being the case, can we suppose it wise to hazard a civil war? Suppose Massachusetts, or any large State, should refuse, and Congress should attempt to compel them, would they not have influence to procure assistance, especially from those States which are in the same situation as themselves? What picture does this idea present to our view? A complying State at war with a non-complying State; Congress marching the troops of one State into the bosom of another; this State collecting auxiliaries, and forming, perhaps, a majority against its Federal head. Here is a nation at war with itself. Can any reasonable man be well disposed toward a Government which makes war and carnage the only means of supporting itself—a Government that can exist only by the sword? Every such war must involve the innocent with the guilty. This single consideration should be sufficient to dispose every peaceable citizen against such a Government."—*Elliot's Debates*, vol. 2, p. 233.

But, sir, strong as these gentlemen were against giving the power to exert armed force against the States, some of the best and ablest members of the convention were in favor of giving Congress control over State action by a negative. Mr. Madison himself was strongly in favor of that; and if that power had been granted, the first of the personal liberty bills that were passed would have been the last, for Congress would at once have annulled it, and the other States would have taken warning by that example. Mr. Pinckney's proposition was brought up, that "the national Legislature should have authority to negative all laws which they should judge to be improper." He urged it strongly. Mr. Madison said:

"A negative was the mildest expedient that could be devised for preventing these mischiefs. The existence of such a check would prevent attempts to commit them. Should no such precaution be engrafted, the only remedy would be in an appeal to coercion. Was such a remedy eligible? Was it practicable? Could the national resources, if exerted to the utmost, enforce a national decree against Massachusetts, abetted, perhaps, by several of her neighbors? It would not be possible. A small proportion of the community, in a compact situation, acting on the defensive, and at one of its extremities, might at any time bid defiance to the national authority. Any government for the United States, formed on the supposed practicability of using force against the unconstitutional proceedings of the States, would prove as visionary and fallacious as the government of Congress."—*Debates of Convention, Madison Papers*, vol. 5, p. 171.

That is, of the Congress of the Confederation. Well, sir, Mr. Butler said to that, he was "vehement against the negative in the proposed extent as cutting off all hope of equal justice to the distant States. The people there would not, he was sure, give it a hearing;" and on the vote, Mr. Madison, aided by Mr. Pinckney, got but three States for it, and of these three States one was Virginia, and he got Virginia only by a vote of three to two, General Washington in the chair not voting. The proposition, therefore, was directly put down, but it was not killed forever. On the 17th of July it was renewed, and Mr. Madison again urged the convention to give some power to the Federal Government over State action:

"Mr. Madison considered the negative on the laws of the States as essential to the efficacy and security of the General Government. The necessity of a General Government proceeds from the propensity of the States to pursue their particular interests, in opposition to the general interest. This propensity will continue to disturb the system unless effectually controlled. Nothing short of a negative on their laws will control it. They will pass laws which will accomplish their injurious objects before they can be repealed by the General Legislature, or set aside by the national tribunals." * * * * "A power of negativing the improper laws of the States is at once the most mild and certain means of preserving the harmony of the system. Its utility is sufficiently displayed in the British system," &c.

This was again negatived in July by the same vote. Finally, on the 23d of August, for the last time, an attempt was made to give that negative with a check upon it; and it was in these words:

"Mr. Charles Pinckney moved to add, as an additional power to be vested in the Legislature of the United States:

"To negative all laws passed by the several States, interfering, in the opinion of the Legislature, with the general interests and harmony of the Union, provided that two-thirds of the members of each House assent to the same."

Mr. Madison wanted it committed. Mr. Rutledge said:

"If nothing else, this alone would damn, and ought to damn, the Constitution. Will any State ever agree to be bound hand and foot in this manner? It is worse than making mere corporations of them, whose by-laws would not be subject to this shackle."

And thereupon Mr. Pinckney withdrew his proposition, and all control was abandoned. There was then to be no control on the part of the General Government over State legislation, otherwise than in the action of the Federal judiciary upon such pecuniary controversies as might be properly brought before them.

Notwithstanding all this jealousy, when this Constitution came to be discussed in the conventions of the States, it met formidable opposition, upon the ground that the States were not sufficiently secure. Its advocates by every possible means endeavored to quiet the alarms of the friends of State rights. Mr. Madison, in Virginia, against Patrick Henry; Mr. Hamilton and Chief Justice Jay, in New York, against the opponents there; in all the States, eminent men used every exertion in their power to induce the adoption of the Constitution. They failed, until they proposed to accompany their ratifications with amendments that should prevent its meaning from being perverted, and prevent it from being falsely construed; and in two of the States especially—the States of Virginia and New York—the ratification was preceded by a statement of what their opinion of its true meaning was, and a statement that, on that construction, and under that impression, they ratified it. Some of the members of the Convention were for asking for these amendments in advance of ratification; but they were told it was unnecessary. In the Virginia convention, Mr. Randolph, who was General Washington's Attorney General, and Judge Nicholas, both expressed the opinion that it was not necessary, and that the ratification would be conditional upon that construction. Mr. Randolph said:

"If it be not considered too early, as ratification has not yet been spoken of, I beg to speak of it. If I did believe, with the honorable gentleman, that all power not expressly retained was given up by the people, I would detest this Government.

"But I never thought so; nor do I now. If, in the ratification, we put words to this purpose, 'And that all authority not given is retained by the people, and may be resumed when perverted to their oppression; and that no right can be canceled, abridged, or restrained, by the Congress, or any officer of the United States'—I say if we do this, I conceive that, as this style of ratification would manifest the principles on which Virginia adopted it, we should be at liberty to consider as a violation of the Constitution every exercise of a power not expressly delegated therein. I see no objection to this."

And Mr. Nicholas said the same thing:

"Mr. Nicholas contended that the language of the proposed ratification would secure everything which gentlemen desired, as it declared that all powers vested in the Constitution were derived from the people, and might be resumed by them whensoever they should be perverted to their injury and oppression; and that every power not granted thereby remained at their will. No danger whatever could arise; for (says he) these expressions will become a part of the contract. The Constitution cannot be binding on Virginia but with these conditions. If thirteen individuals are about to make a contract, and one agrees to it, but at the same time declares that he understands its meaning, signification, and intent to be (what the words of the contract plainly and obviously denote) that it is not to be construed so as to impose any supplementary condition on him, and that he is to be exonerated from it whensoever any such imposition shall be attempted, I ask whether, in this case, these conditions on which he has assented to it would not be binding on the other twelve? In like manner these conditions will be binding on Congress. They can exercise no power that is not expressly granted them."

So, sir, we find that not alone in these two conventions, but by the common action of the States, there was an important addition made to the Constitution by which it was expressly provided that it should not be construed to be a general government over all the people, but that it was a Government of States, which delegated powers to the General Government. The language of the ninth and tenth amendments to the Constitution is susceptible of no other construction:

"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

"The powers not delegated to the United States."

Gentlemen are fond of using the words "surrendered," "abandoned," "given up." That is the constant language on the other side. The language of the amendment intended to fix the meaning of the Constitution says, that these powers were not

abandoned by the State, not surrendered, not given up, but "delegated," and therefore subject to resumption:

"The powers not *delegated* to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Now, Mr. President, if we admit, as we must, that there are certain political rights guarantied to the States of this Union by the terms of the Constitution itself—rights political in their character, and not susceptible of judicial decision—if any State is deprived of any of those rights, what is the remedy? for it is idle to talk to us at this day in a language which shall tell us we have rights and no remedies. For the purpose of illustrating the argument upon this subject, let us suppose a clear, palpable case of violation of the Constitution. Let us suppose that the State of South Carolina having sent two Senators to sit upon this floor, had been met by a resolution of the majority here that, according to her just weight in the Confederacy, one was enough, and that we had directed our Secretary to swear in but one, and to call but one name on our roll as the yeas and nays are called for voting. The Constitution says that each State shall be entitled to two Senators, and each Senator shall have one vote. What power is there to force the dominant majority to repair that wrong? Any court? Any tribunal? Has the Constitution provided any recourse whatever? Has it not remained designedly silent on the subject of that recourse? And yet, what man will stand up in this Senate and pretend that if, under these circumstances, the State of South Carolina had declared, "I entered into a Confederacy or a compact by which I was to have my rights guaranteed by the constant presence of two Senators upon your floor; you allow me but one; you refuse to repair the injustice; I withdraw;" what man would dare say that that was a violation of the Constitution on the part of South Carolina? Who would say that that was a revolutionary remedy? Who would deny the plain and palpable proposition that it was the exercise of a right inherent in her under the very principles of the Constitution, and necessarily so inherent for self-defence?

Why, sir, the North if it has not a majority here to-day will have it very soon. Suppose these gentlemen from the North with the majority think that it is no more than fair, inasmuch as we represent here States in which there are large numbers of slaves, that the northern States should have each three Senators, what are we to do? They swear them in. No court has the power of prohibition, of *mandamus* over this body in the exercise of its political powers. It is the exclusive judge of the elections, the qualifications, and the returns of its own members, a judge without appeal. Shall the whole fifteen southern States submit to that, and be told that they are guilty of revolutionary excess if they say, we will not remain with you on these terms; we never agreed to it? Is that revolution, or is it the exercise of clear constitutional right?

Suppose this violation occurs under circumstances where it does not appear so plain to you, but where it does appear equally plain to South Carolina; then you are again brought back to the inevitable point, who is to decide? South Carolina says, you forced me to the expenditure of my treasure, you forced me to the shedding of the blood of my people, by a majority vote, and with my aid you acquired territory; now I have a constitutional right to go into that territory with my property, and to be there secured by your laws against its loss. You say, no, she has not. Now, there is this to be said; that right is not put down in the Constitution in quite so clear terms as the right to have two Senators; but it is a right which she asserts with the concurrent opinion of the entire South. It is a right which she asserts with the concurrent opinion of one-third or two-fifths of your own people interested in refusing it. It is a right that she asserts, at all events, if not in accordance with the decision—as you may say no decision was rendered—in accordance with the opinion expressed by the Supreme Court of the United States; but yet there is no tribunal for the assertion of that political right. Is she without a remedy under the Constitution? If not, then what tribunal? If none is provided, then natural law and the law of nations tells you that she and she alone, from the very necessity of the case, must be the judge of the infraction and the mode and measure of redress.

This is no novel doctrine; but it is as old as the law of nations, coeval in our system with the foundation of the Constitution; clearly announced over and over again in our political history. A very valued friend from New York did me the favor to send me an extract, which he has written out, from an address delivered by John Quincy Adams before the New York Historical Society in 1839, at the jubilee of the Constitution. His language is this:

"Nations acknowledge no judge between them upon earth, and their Governments, from necessity, must, in their intercourse with each other, decide when the failure of one party to a contract to perform its obligations absolves the other from the reciprocal fulfillment of his own. But this last of earthly powers is not necessary to the freedom or independence of States, connected together by the immediate action of the people, of whom they consist. To the people alone is there reserved, as well the dissolving as the constituent power, and that power can be exercised by them only under the tie of conscience, binding them to the retributive justice of heaven.

"With these qualifications, we may admit the same right as vested in the people of every State in the Union, with reference to the General Government, which was exercised by the people of the United Colonies with reference to the supreme head of the British Empire, of which they formed a part; and, under these limitations, have the people of each State in the Union a right to secede from the confederated Union itself.

"Thus stands the RIGHT. But the indissoluble link of union between the people of the several States of this confederated nation is, after all, not in the *right*, but in the *heart*. If the day should ever come (may Heaven avert it) when the affections of the people of these States shall be alienated from each other; when the fraternal spirit shall give way to cold indifference, or collisions of interest shall fester into hatred, the bands of political association will not long hold together parties no longer attracted by the magnetism of conciliated interests and kindly sympathies; and far better will it be for the people of the *disunited* States to part in friendship from each other, than to be held together by constraint. Then will be the time for reverting to the precedent, which occurred at the formation and adoption of the Constitution, to form again a more perfect Union, by dissolving that which could no longer bind, and to leave the separated parts to be reunited by the law of political gravitation, to the center."

I am compelled to refer also for the purpose of completing my argument to the very familiar Virginia and Kentucky resolutions. They cannot, however, be too often repeated or held too reverently in memory. The first, drawn by Mr. Jefferson, is:

"*Resolved*, That the several States composing the United States of America are not united on the principle of unlimited submission to their General Government; but that by compact, under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a General Government for special purposes, delegated to that Government certain definite powers, reserving each State to itself the residuary mass of right to their own self-government; and that whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force; that to this compact each State acceded as a State, and is an integral party; that this Government, created by this compact, was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion, and not the Constitution, the measure of its power; *but that, as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself as well of infractions as of the mode and measure of redress*."

These resolutions of Virginia were submitted to all the States. They were commented upon; they were answered generally with contempt and disdain, because the people of the northern States never seem to have comprehended that the States had any rights at all. They have always gone astray in the heresy that this was one consolidated Government, governing subjects to the Federal Government, and not controlling States, and individuals in the States. These resolutions were returned in many cases with terms of contempt and contumely. They were, therefore, referred to Mr. Madison for further consideration and defence, and he produced upon that subject the best considered, the most perfect, the most compact argument upon the constitutional rights of the States of this Union, that has ever been delivered. It has never been answered to this day in any of its positions. No man can answer it. The proof is such that conviction is forced home upon the mind as by the enunciation of an axiom. A single passage I desire to quote. It has been often quoted, but I must read it again:

"It appears to your committee to be a plain principle, founded in common sense, illustrated by common practice, and essential to the nature of compacts, that, where resort can be had to no tribunal superior to the authority of the parties, *the parties themselves must be the rightful judges, in the last resort, whether the bargain made has been pursued or violated*. The Constitution of the United States was formed by the sanction of the States, given by each in its sovereign capacity. It adds to the stability and dignity, as well as to the authority, of the Constitution, that it rests on this legitimate and solid foundation. The States, then, being the parties to the constitutional compact, and in their sovereign capacity, it follows, of necessity, that there can be no tribunal, above their authority, to decide, in the last resort, whether the compact made by them be violated, and consequently, that, *as the parties to it, they must themselves decide, in the last resort, such questions as may be of sufficient magnitude to require their interposition*."

He goes on to state, not limitations upon the power, but considerations in regard to the mode of exercising it. He says:

"The resolution has accordingly, guarded against any misapprehension of its object, by expressly requiring, for such an interposition, 'the case of a deliberate, palpable, and dangerous breach of the Constitution, by the exercise of powers not granted by it.' It must be a case not of light and transient nature, but of a nature dangerous to the great purposes for which the Constitution was established."

Mr. Madison, in the debates in the Virginia convention, seemed to take it for granted that any State had a right to secede at any time, without any condition or

limitation. His later, well-considered report, qualifies that doctrine, as I have just shown; but at the time the debates occurred in the Virginia convention about adopting the Constitution, it was taken for granted on all sides that Virginia could withdraw whenever she pleased; nobody seems to have disputed that. After defending the grant of power in relation to the militia, Mr. Madison said:

"An observation fell from a gentleman on the same side with myself, which deserves to be attended to. If we be dissatisfied with the National Government, if we should choose to renounce it, this is an additional safeguard to our defence."—*Elliot's Debates*, vol. 3, p. 414.

Apparently taking it for granted that any State could renounce it when it pleased, and that the militia would already be organized as a safeguard for its defence. I do not state this as any particularly pertinent authority, but to show the impressions that generally prevailed at the time of the adoption of the Constitution; but when the question was subsequently discussed in 1798 and 1799, upon the alien and sedition laws, not only did Mr. Madison make this report, but I have a reference here to a letter of Mr. Jefferson, which I have not on the table, and which I will annex to my speech when printed, showing that he deliberately examined this whole question, and came to the same conclusion.

But, Mr. President, the President of the United States tells us that he does not admit this right to be constitutional, that it is revolutionary. I have endeavored thus far to show that it results from the nature of the compact itself; that it must necessarily be one of those reserved powers which was not abandoned by it, and therefore grows out of the Constitution, and is not in violation of it. If I am asked how I will distinguish this from revolutionary abuse, the answer is prompt and easy. These States, parties to the compact, have a right to withdraw from it, by virtue of its own provisions, when those provisions are violated by the other parties to the compact, when either powers not granted are usurped, or rights are refused that are especially granted to the States. But, sir, there is a large class of powers granted by this Constitution, in the exercise of which a discretion is vested in the General Government, and, in the exercise of that discretion, these admitted powers might be so perverted and abused as to give cause of complaint, and, finally, to give the right to revolution; for under those circumstances there would be no other remedy. Now, taking again the supposition of a dominant northern majority in both branches, and of a sectional President and Vice President, the Congress of the United States then, in the exercise of its admitted powers, and the President to back them, could spend the entire revenue of the Confederation in that section which had control, without violating the words or the letter of the Constitution; they could establish forts, light-houses, arsenals, magazines, and all public buildings of every character in the northern States alone, and utterly refuse any to the South. The President, with the aid of his sectional Senate, could appoint all officers of the Navy and of the Army, all the civil officers of the Government, all the judges, attorneys, and marshals, all collectors and revenue officers, all postmasters—the whole host of public officers he might, under the forms and powers vested by the Constitution, appoint exclusively from the northern States, and quarter them in the southern States, to eat out the substance of our people, and assume an insulting superiority over them. All that might be done in the exercise of admitted constitutional power; and it is just that train of evils, of outrages, of wrongs, of oppressions long continued, that the Declaration of Independence says a people preserves the inherent right of throwing off by destroying their government by revolution.

I say, therefore, that I distinguish the rights of the States under the Constitution into two classes: one resulting from the nature of their bargain; if the bargain is broken by the sister States, to consider themselves freed from it on the ground of breach of compact; if the bargain be not broken, but the powers be perverted to their wrong and their oppression, then, whenever that wrong and oppression shall become sufficiently aggravated, the revolutionary right—the last inherent right of man to preserve freedom, property, and safety—arises, and must be exercised, for none other will meet the case.

But, Mr. President, suppose South Carolina to be altogether wrong in her opinion that this compact has been violated to her prejudice, and that she has, therefore, a right to withdraw; take that for granted—what then? You still have the same issue to meet, face to face. You must permit her to withdraw in peace, or you must declare war. That is, you must coerce the State itself, or you must permit her to depart in peace. There is nothing whatever that can render for an instant tenable the attempted distinction between coercing a State itself, and coercing all the individuals in the manner now proposed. Let me read a few lines upon that

subject. First—Vattel, in speaking of States, and of their rights, and the rights of their citizens, uses this language:

"Every nation that governs itself, under what form soever, without dependence on any foreign Power, is a *sovereign State*. Its rights are naturally the same as those of any other State. Such are the moral persons who live together in a natural society, subject to the law of nations. To give a nation a right to make an immediate figure in this grand society, it is sufficient that it be really sovereign and independent; that is, that it govern itself by its own authority and laws."

Then, he speaks of those qualifications that may exist in relation to this sovereignty; and he says:

"Several sovereign and independent States may unite themselves together by a perpetual confederacy, without ceasing to be, each individually, a perfect State. They will together constitute a federal republic: their joint deliberations will not impair the sovereignty of each member, though they may, in certain respects, put some restraint on the exercise of it, in virtue of voluntary engagements. A person does not cease to be free and independent when he is obliged to fulfill engagements which he has voluntarily contracted."—*Vattel's Law of Nations*, book 1, chap. 1.

Here, then, we see that, under the law of nations, the State of South Carolina is a sovereign State, independently of all considerations drawn from the language of the Constitution itself, and as such is entitled to be treated, and as such has a right to protect and shield her citizens from all the consequences of obedience to her acts. The honorable Senator from Illinois (Mr. TRUMBULL) put to my friend from Virginia (Mr. MASON) the question what rebellion was, and put it with a triumphant air, as if he supposed that in case of rebellion the laws of war did not apply; that then it was a mere question of hanging traitors; that there could be no independence of the State of South Carolina, but a mere rebellion of the body of its citizens. Suppose it to be so, what does the law of nations say in that very case?

"When a party is formed in a State who no longer obey the sovereign, and are possessed of sufficient strength to oppose him—or when, in a Republic, the nation is divided into two opposite factions, and both sides take up arms—this is called a *civil war*. Some writers confine this term to a just insurrection of the subjects against their sovereign, to distinguish that lawful resistance from *rebellion*, which is an open and unjust resistance. But what appellation will they give to a war which arises in a Republic torn by two factions—or in a monarchy, between two competitors for the crown? Custom appropriates the term 'civil war' to every war between the members of one and the same political society. If it be between part of the citizens on the one side, and the sovereign, with those who continue in obedience to him, on the other, provided the malcontents have any reason for taking up arms, nothing further is required to entitle such disturbance to the name of *civil war*, and not to that of *rebellion*. This latter term is applied only to such an insurrection against lawful authority as is void of all appearance of justice. The sovereign, indeed, never fails to bestow the appellation of *rebels* on all such of his subjects as openly resist him; but when the latter have acquired sufficient strength to give him effectual opposition, and oblige him to carry on the war against them according to the established rules, he must necessarily submit to the use of the term '*civil war*.'

"It is foreign to our purpose in this place to weigh the reasons which may authorize and justify a civil war; we have elsewhere treated of the cases wherein subjects may resist the sovereign. (Book 1, chap. iv.) Setting, therefore, the justice of the cause wholly out of the question, it only remains for us to consider the maxims which ought to be observed in a civil war, and to examine whether the sovereign in particular is, on such an occasion, bound to conform to the established rules of war.

"A civil war breaks the bands of society or government, or at least suspends their force and effect; it produces in the nation two independent parties, who consider each other as enemies, and acknowledge no common judge. These two parties, therefore, must necessarily be considered as thenceforward constituting, at least for a time, two separate bodies, two distinct societies."

How does that square with this notion about coercing individuals and not societies?

"Though one of the parties may have been to blame in breaking the unity of the State and resisting lawful authority, they are not the less divided in fact. Besides, who shall judge them? Who shall pronounce on which side the right or the wrong lies? On earth, they have no common superior. *They stand, therefore, in precisely the same predicament as two nations who engage in a contest, and, being unable to come to an agreement, have recourse to arms.*"—*Vattel's Law of Nations*, book 3, chap. 18, p. 424.

So much for the question of rebellion under the law of nations. But, sir, I wish to call the attention of gentlemen to an authority which, on the other side, is seldom disputed upon questions of constitutional and international law. I refer to Mr. Webster. On the occasion of the disturbances on the Canada frontier, Alexander McLeod, a British subject, came across the line in time of profound peace, seized a steamboat called the Caroline, killed one of the men on board, moved it from its moorings, set fire to it, and it plunged over the Falls of Niagara. Some years afterwards he was found in the State of New York, arrested, and brought to trial for the crime. The Government of Great Britain communicated to this Government that, as a Government, it assumed the responsibility, and therefore, under the law

of nations, required that the individual should be given up. Mr. Fox, in his letter to Mr. Webster, said:

"It would be contrary to the universal practice of civilized nations to fix individual responsibility upon persons who, with the sanction or by the orders of the constituted authorities of a State, engaged in military or naval enterprizes in their country's cause; and it is obvious that the introduction of such a principle would aggravate beyond measure the miseries, and would frightfully increase the demoralizing effects of wars, by mixing up with national exasperation the ferocity of personal passions, and the cruelty and bitterness of individual revenge.

"Her Majesty's Government cannot believe the Government of the United States can really intend to set an example so fraught with evil to the community of nations, and the direct tendency of which must be to bring back into the practice of modern war atrocities which civilization and Christianity have long since banished."—*Works of Daniel Webster*, vol. 6, p. 248.

To that, Mr. Webster made reply:

"The communication of the fact that the destruction of the Caroline was an act of public force by the British authorities, being formally made to the Government of the United States by Mr. Fox's note, the case assumes a decided aspect.

"The Government of the United States entertains no doubt, that after this avowal of the transaction as a public transaction, authorized and undertaken by the British authorities, individuals concerned in it ought not, by the principles of public law and the general usage of civilized States, to be holden personally responsible in the ordinary tribunals of law for their participation in it. And the President presumes that it can hardly be necessary to say that the American people, not distrustful of their ability to redress public wrongs by public means, cannot desire the punishment of individuals when the act complained of is declared to have been an act of the Government itself." *Works of Daniel Webster*, vol. 6, p. 253.

Instructions to this effect were accordingly sent to the Attorney General. But, Mr. Webster was subsequently attacked in the Senate for his conduct in relation to this negotiation; and he delivered a very elaborate speech in defence of the treaty of Washington. This brings me to the point which I suggested to the honorable Senator from Wisconsin, when he told us the other day that each citizen owed allegiance to two sovereignties, and that he was bound at this peril to distinguish between their orders, that he could commit treason, under the Constitution, against the United States, and that the Constitution also recognizes that he could commit treason against the State, and yet the honorable Senator went so far as to say, that if the State ordered him to do a thing, and the United States forbade him from doing it, both under the penalty of death, it was his misfortune to be placed in such a position that he might be hanged or executed by either, and under the law of nations, have no redress, no escape. I answer him in the language of Mr. Webster on that very subject:

"In the next place, and on the other hand, General Harrison was of the opinion that the arrest and detention of McLeod were contrary to the law of nations. McLeod was a soldier, acting under the authority of his Government, and obeying orders which he was bound to obey. It was absurd to say that a soldier, who must obey orders or be shot, may still be hanged if he does obey them."—*Works of Daniel Webster*, vol. 5, page 123.

I do not use the term "absurd;" it is Mr. Webster who uses it. But perhaps gentlemen will say: Mr. Webster says that he was acting under the authority of his Government, and obeying orders which he was bound to obey; but we deny that a citizen of South Carolina is bound to obey the orders of his Government. To that I reply, in the language of Vattel, that no citizen of any State has the right to question that; that it is a principle of the law of nations, that the citizen owes obedience to the command of his sovereign, and he cannot enter into the question whether the sovereign's order is lawful or unlawful, except at his peril. If his sovereign engages in war—if his State declares her independence—he is bound by the action of his State, and has no authority to control it. Why, Mr. President, how idle and absurd would be any other proposition! How idle and absurd to suppose that you can, in principle and in practice, separate each particular individual of a State and make him responsible for the collective act of his Government—each agent in turn. The honorable Senator from Ohio, (Mr. PUGH,) who delivered to us the other day so magnificent and patriotic an appeal, read you the language of the different Presidents of the United States upon that subject, and cited to you the language of Mr. Adams, in which he said that he had been forced to avoid making use of the power of the Federal Government, in the State of Georgia, against certain surveyors acting in defiance of the Federal authority, because he understood that they were ordered so to act by their State government, and believed themselves bound to obey the order.

Sir, if there was anything in this idea in theory, you might reduce it to practice; but what can be more absurd, more vague, more fanciful, than the suggestions put out by gentlemen here? You are going now, observe, to declare no war and to

coerce no State; you are simply going to execute the laws of the United States against individuals in the State of South Carolina. That is your proposition. Is it serious? One gentleman says he will hang for treason. Ah, where is the marshal to seize, and where is the court to try, where is the district attorney to prosecute, and where is the jury to convict? Are you going to establish all these by arms? Perhaps you tell me you will remove him elsewhere for trial. Not so; our fathers have not left our liberties so unguarded and so unprotected as that. The Constitution originally provided that no man could be brought to trial for an offence out of the State where he committed it. The fathers were not satisfied with it, and they added an amendment that he should not be brought to trial out of the district even in which he had committed it. You cannot take him out of the district. You have got no judge, no marshal, no attorney, no jurors, there; and suppose you had: who is to adjudge, who is to convict? His fellow-citizens, unanimous in opinion with him, determine that he has done his duty, and has committed no guilt. That is the way you are going to execute the laws against treason!

What next? Oh, no, says the Senator from Ohio, (Mr. WADE,) this is what we will do; we will execute the laws to collect revenue by blockading your ports, and stopping them up. At first blush this seems a very amusing mode of collecting revenue in South Carolina, by allowing no vessels to come in on which revenue can be collected. It is the strangest of all possible fancies that that is the way of collecting revenue there, of enforcing the laws in the State against individuals. But first you are to have no war. And what is blockade? Does any man suppose that blockade can exist by a nation at peace with another; that it is a peace power; that it can be exercised on any other ground than that you are at war with the party whose ports you blockade, and that you make proclamation to all the Governments of the earth that their vessels shall not be authorized to enter into these ports, because you are reducing your enemy by the use of regular constituted, recognized, warlike means? Oh, but perhaps it is not a blockade that you will have; you will have an embargo, that is what you mean. We are guarded here again. The Constitution heads you off at every step in this Quixotic attempt to go into a State to exercise your laws against her whole citizens without declaring war or coercing the State. You cannot embargo the ports of one State without embargoing all your ports; you cannot shut up one without shutting up all; the Constitution of the United States expressly forbids it. If your blockade or your embargo were a peaceful measure, you are prohibited by the very words of the Constitution itself from forcing a vessel bound to or from one State to enter or clear or pay duties in another, or from making any regulations of commerce whatever, giving any preference to the ports of one State over the ports of another; and you have no more right to blockade or close the ports of South Carolina by embargo, even by act of Congress, than you have to declare that a sovereign State shall have no right to have more than one Senator on this floor. Your blockade is impracticable, unconstitutional, out of the power of the President.

What is the idea of executing the laws by armed force against individuals? Gentlemen seem to suppose—and they argue upon the supposition—that it is possible, under the Constitution of the United States, for the President to determine when laws are not obeyed and to force obedience by the sword, without the interposition of courts of justice. Does any man have such an idle conceit as that? Does he suppose that, by any possible construction, the power of the Federal Congress to call out the militia, and to use the Army and the Navy to suppress insurrection and to execute the laws, means that the President is to do it of his own volition and without the intervention of the civil power? The honorable Senator from Tennessee, (Mr. JOHNSON,) the other day, called upon us to look at the example of Washington, who put down rebellion in Pennsylvania. He said well that he was no lawyer, when he cited that precedent. General Washington called forth the militia of Pennsylvania and of other States to aid in executing the laws only upon a requisition by a judge of the Supreme Court of the United States certifying to him that the marshal was unable to carry out the judgments of the court.

Mr. JOHNSON, of Tennessee. I understood that very well.

Mr. BENJAMIN. Then what on earth do you mean by saying that you will go into a State and execute the laws of the United States against individuals, without a judge or jury there, without a marshal or attorney, with nobody to declare the violation of law, or to order its execution before you attempt to enforce it? The Senator may not have intended to assume such a position. He has been unfortunate in the impressions that he has produced upon the country.

But, sir, other means are suggested. We cannot go to war; we are not going to war; we are not going to coerce a State. "Why," says the Senator from Illinois, "who talks of coercing a State; you are attempting to breed confusion in the public mind; you are attempting to impose upon people by perverting the question; we only mean to execute the laws against individuals." Again, I say, where will be the civil process which must precede the action of the military force? Surely, surely it is not at this day that we are to argue that neither the President, nor the President and Congress combined, are armed with the powers of a military despot to carry out the laws, without the intervention of the courts, according to their own caprice and their own discretion, to judge when laws are violated, to convict for the violation, to pronounce sentence, and to execute it. You can do nothing of the kind with your military force.

But it is suggested, and the President is weak enough to yield to the suggestion, that you will collect your revenue by force—by the action of the power of the Federal Government on individuals. Has anybody followed this out practically? Is it possible? I remember that Mr. Webster once, as a mere figure of rhetoric, in his debate on the Foot resolutions, used some such threat as this against this same State of South Carolina; but it was looked upon as a mere beautiful figure of speech. No man ever paid any attention to it as really a threat of the use of constitutional power. You will put your collector on board of a vessel in the harbor. It shall be a man-of-war; it is in the port; and there you will make everybody pay duties before the goods are landed. That is the next proposition, that nobody sees any practical difficulty about. But, sir, it is totally impracticable—totally impossible. Take a case. A citizen of New York owns a vessel which loads at Liverpool with a cargo of assorted merchandise, part free, part owing duty, and consigns it to Charleston. He enters the harbor. Under the law he is obliged to make entry of his vessel, to produce his manifest, to go through certain other formalities. He goes on board your ship-of-war, sees the collector, and complies with the orders. What next? There are no duties paid yet, and the man who has a right to the free goods has no duties to pay. You cannot prevent him from going to the wharf and discharging them. There is no law to be executed there against an individual. But I will take it for granted that the whole cargo is a duty-paying cargo, and all belongs to one man, who does not mean to pay your duties. You are no better off. The man declines to enter his cargo. What is the law? The master of the vessel wants to go away. He is entitled by law to report to the collector that he is ready to deliver his cargo, that nobody is there to enter it, and that he demands that his cargo be discharged, and put in public store; and after that he may go upon his new voyage; and you cannot change that, unless you change the law for all the ports of the United States. Or he may go further; the importer may go to the collector, and say, "I want to enter my cargo in warehouse;" and he gives a bond signed by himself and a solvent fellow-citizen, that they will pay the duty when he takes the goods out of the warehouse. Then you must let him put those goods into the custom-house warehouse; and you cannot change that law either, without changing it for the whole United States; because you cannot, under the Constitution, by any regulation of commerce, give any preference to the ports of one State over those of another.

Mind you, you are at peace; you are not coercing a State; you are merely executing the laws against individuals. You cannot do it without breaking up your whole warehouse system; you cannot do it without breaking up your whole commercial system in every port of the Confederacy. Your goods are ashore; they are in Government warehouses; but you have not got the duties. A rush upon the warehouse, and the goods are taken out. You have got a bond, but you have no court to sue it in; and if you had, you would have no jury to forfeit it, because the jury would be told by the court, or at all events by the lawyers in behalf of the defendant, that the Government had no right to collect that bond; that it was a usurpation which required him to give the bond.

This whole scheme, this whole fancy, that you can treat the act of a sovereign State, issued in an authoritative form, and in her collective capacity as a State, as being utterly out of existence; that you can treat the State as still belonging collectively to the Confederacy, and that you can proceed, without a solitary Federal officer in the State, to enforce your laws against private individuals, is as vain, as idle, and delusive as any dream that ever entered into the head of man. The thing cannot be done. It is only asserted for the purpose of covering up the true question, than which there is no other; you must acknowledge the independence of the seceding State, or reduce her to subjection by war.

Now, Mr. President, I desire not to enter in any detail into the dreary catalogue of wrongs and outrages by which South Carolina defends the position that she has withdrawn from this Union because she has a constitutional right to do so, by reason of prior violations of the compact by her sister States. Before, however, making any statement—that statement to which we have been challenged, and which I shall make in but very few words—of the wrongs under which the South is now suffering, and for which she seeks redress, as the difficulty seems to arise chiefly from a difference in our construction of the Constitution, I desire to read one more, and a last, citation from Vattel, giving a rule in relation to the construction of treaties between sovereigns, and compacts between States. Among other things, he says:

"The rules that establish a lawful interpretation of treaties are sufficiently important to be made the subject of a distinct chapter. For the present, let us simply observe that an evidently false interpretation is the grossest imaginable violation of the faith of treaties. He that resorts to such an expedient, either impudently sports with that sacred faith, or sufficiently evinces his inward conviction of the degree of mortal turpitude annexed to the violation of it; he wishes to act a dishonest part, and yet preserve the character of an honest man; he is a puritanical imposter, who aggravates his crime by the addition of a detestable hypocrisy. Grotius quotes several instances of evidently false interpretations put upon treaties. The Plateans having promised the Thebans to restore their prisoners, restored them after they had put them to death. Pericles, having promised to spare the lives of such of the enemy as laid down their arms, ordered all those to be killed that had iron clasps to their cloaks. A Roman general having agreed with Antiochus to restore him half his fleet, caused each of the ships to be sawed in two. All these interpretations are as fraudulent as that of Rhadamistus, who, according to Tacitus's account, having sworn to Mithridates that he would not employ either poison or steel against him, caused him to be smothered under a heap of clothes."—*Vattel's Law of Nations*, book 2, chap. 15, p. 284.

There is the text; now the commentary.

You, Senators of the Republican party, assert, and your people whom you represent assert, that under a just and fair interpretation of the Federal Constitution it is right that you deny that our slaves, which directly and indirectly involve a value of more than four thousand million dollars, are property at all, or entitled to protection in Territories owned by the common Government.

You assume the interpretation that it is right to encourage, by all possible means, directly and indirectly, the robbery of this property, and to legislate so as to render its recovery as difficult and dangerous as possible; that it is right and proper and justifiable, under the Constitution, to prevent our mere transit across a sister State, to embark with our property on a lawful voyage, without being openly despoiled of it.

You assert, and practice upon the assertion, that it is right to hold us up to the ban of mankind, in speech, writing, and print, with every appliance of publicity, as thieves, robbers, murderers, villains, and criminals of the blackest dye, because we continue to own property which we owned at the time that we all signed the compact.

That it is right that we should be exposed to spend our treasure in the purchase, or shed our blood in the conquest, of foreign territory, with no right to enter it for settlement without leaving behind our most valuable property, under penalty of its confiscation.

You practically interpret this instrument to be that it is eminently in accordance with the assurance that our tranquility and welfare were to be preserved and promoted, that our sister States should combine to prevent our growth and development; that they should surround us with a cordon of hostile communities, for the express and avowed purpose of accumulating in dense masses, and within restricted limits, a population which you believe to be dangerous, and thereby force the sacrifice of property nearly sufficient in value to pay the public debt of every nation in Europe.

This is the construction of the instrument that was to preserve our security, promote our welfare, and which we only signed on your assurance that that was its object. You tell us that this is a fair construction—not all of you, some say one thing, some another; but you act, or your people do, upon this principle. You do not propose to enter into our States, you say, and what do we complain of? You do not pretend to enter into our States to kill or destroy our institutions by force. Oh, no. You imitate the faith of Rhadamistus: you propose simply to close us in an embrace that will suffocate us. You do not propose to fell the tree; you promised not. You merely propose to girdle it, that it die. And then, when we tell you that we do not understand this bargain this way, that your acting upon it in this spirit releases us from the obligations that accompany it; that under no circumstances can we consent to live together under that interpretation, and say: "we will go

from you; let us go in peace;" we are answered by your leading spokesmen: "Oh, no; you cannot do that; we have no objection to it personally, but we are bound by our oaths; if you attempt it, your people will be hanged for treason. We have examined this Constitution thoroughly; we have searched it out with a fair spirit, and we can find warrant in it for releasing ourselves from the obligation of giving you any of its benefits, but our oaths force us to tax you; we can dispense with everything else; but our consciences we protest upon our souls will be sorely worried if we do not take your money." (Laughter.) That is the proposition of the honorable Senator from Ohio, in plain language. He can avoid everything else under the Constitution, that stands in the way of secession; but how is he to get rid of the duty of taking our money he cannot see. (Laughter.)

Now, Senators, this picture is not placed before you with any idea that it will act upon any one of you, or change your views, or alter your conduct. All hope of that is gone. Our committee has reported this morning that no possible scheme of adjustment can be devised by them all combined. The day for the adjustment has passed. If you would give it now, you are too late.

And now, Senators, within a few weeks we part to meet as Senators in one common council chamber of the nation no more forever. We desire, we beseech you, let this parting be in peace. I conjure you to indulge in no vain delusion that duty or conscience, interest or honor, imposes upon you the necessity of invading our States or shedding the blood of our people. You have no possible justification for it. I trust it is in no craven spirit, and with no sacrifice of the honor or dignity of my own State, that I make this last appeal, but from far higher and holier motives. If, however, it shall prove vain, if you are resolved to pervert the Government framed by the fathers for the protection of our rights into an instrument for subjugating and enslaving us, then, appealing to the Supreme Judge of the universe for the rectitude of our intentions, we must meet the issue that you force upon us as best becomes freemen defending all that is dear to man.

What may be the fate of this horrible contest, no man can tell, none pretend to foresee; but this much I will say: the fortunes of war may be adverse to our arms; you may carry desolation into our peaceful land, and with torch and fire you may set our cities in flames; you may even emulate the atrocities of those who, in the war of the revolution, hounded on the blood-thirsty savage to attack upon the defenceless frontier; you may, under the protection of your advancing armies, give shelter to the furious fanatics who desire, and profess to desire, nothing more than to add all the horrors of a servile insurrection to the calamities of civil war; you may do all this—and more, too, if more there be—but you never can subjugate us; you never can convert the free sons of the soil into vassals, paying tribute to your power; and you never, never can degrade them to the level of an inferior and servile race. Never! Never!

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